

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: NOVEMBER 23, 2010

SUBJECT: IN THE MATTER OF THE JOINT PETITION OF IDAHO POWER,
AVISTA CORPORATION, AND ROCKY MOUNTAIN POWER TO
ADDRESS AVOIDED COST ISSUES AND TO REDUCE THE
PUBLISHED AVOIDED COST RATE ELIGIBILITY CAP, CASE NO.
GNR-E-10-04

On November 5, 2010, Idaho Power Company, Avista Corporation, and Rocky Mountain Power filed a Joint Petition requesting the Commission to initiate an investigation to address various avoided cost issues related to the Public Utility Regulatory Policies Act of 1978 (PURPA). While the investigation is underway, the Petitioners also request that the Commission “lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW [to] be effective immediately. . . .” Petition at 7.

THE JOINT PETITION

A. The Avoided Cost Issues

The Joint Petition was filed following a public workshop in Case No. GNR-E-09-03 convened for the purposes of discussing a surrogate avoided resource (SAR) methodology for wind specific qualifying facilities (QFs). The Petition notes that many topics were discussed in the workshop including issues related to: “PURPA wind QFs and renewable energy credits (“REC”) ownership, the Commission’s existing avoided cost methodology, the effect of the same upon the electrical systems of the utilities, the effect upon the utilities’ customers, and the effect upon the continued development of QF projects.” *Id.* at 2. The Petition notes that there was also discussion about closing the GNR-E-09-03 wind SAR docket and opening a new docket

dedicated to discussing “the broader issues related to all PURPA QFs and [the Commission’s] avoided cost methodology.” *Id.*

The Joint Petition asserts that both Idaho Power and Rocky Mountain Power are projected to add large quantities of wind generation to their systems. The Petition states that Idaho Power currently has more than 208 MW of wind generation and an additional 264 MW of Commission-approved QF wind contracts (many of which are scheduled to be online by December 31, 2010). “Idaho Power also has 80 MW of QF wind pending approval at the Commission. In addition, Idaho Power has over 570 MW of new QF wind contract requests. . . .” Petition at 3-4. The Petition further states that:

In total, Idaho Power could have 1100 MW of wind powered generation on its system in the near term, which exceeds the minimum loads experienced on Idaho Power’s system this year. Cumulatively, this amount of generation would exceed any other single source of generation – hydro, coal, natural gas, or renewables – that exists on Idaho Power’s system.

Id. at 4 (internal citation omitted).

Rocky Mountain asserts that it is in a similar situation. The Petition declares that in 2005, Rocky Mountain had a single 20 MW wind QF contract and less than 50 MW of wind QF requests in Idaho. “As of today, [Rocky Mountain] has 64 MW of wind QF contracts executed; however, none have achieved commercial operation, and another 358 MW of standard wind QF contracts are proposed.” Rocky Mountain maintains that the majority of these proposed standard wind QF contracts are configured to use the Goshen Idaho electrical system “where integration of the QF resource as a Network Resource for serving load could be impacted by transmission constraints across Path C if the wind power is exported to RMP’s northern Utah load.” *Id.* at 4.

In addition to the issues of incorporating and integrating wind generation in large amounts, the Petitioners also identified other areas of concern. These other issues include: system reliability; operational control; ownership and valuation of RECs; the lack of capacity (as opposed to energy) provided by intermittent wind generation; the need to build/acquire capacity on the system; the associated transmission infrastructure and upgrades needed to bring additional wind generation to load; the interconnection and transmission service request process; the mechanical availability guarantee (MAG) provision; the posting of security; liquidated damages; a standard contract template; the impact of QF generation on the integrated resource planning (IRP) process; and the increased size and scale of QF projects. *Id.* at 4-5.

In regards to the last issue, the Petition states that many current QF projects are “large, utility-scale wind farms that are broken up into 10 aMW increments in order to qualify for the published [avoided cost] rates.” *Id.* at 5. The Petition maintains that the typical wind develop is no longer “unsophisticated” about the QF process and small projects (.5-1.5 MW) “are no longer the norm.” *Id.* The Petitioners assert that it is “commonplace” for wind developers seeking QF contracts with Idaho Power and Rocky Mountain to aggregate “six or more ‘projects’ totaling 100 to 150 MW of nameplate rating, and the multiple projects to all share interconnection facilities to one common utility delivery point.” *Id.*

B. Reducing the Eligibility Cap

The Joint Petition asserts that there was a discussion at the November 3, 2010 workshop regarding the need to temporarily reduce the eligibility cap for the published avoided cost rates from 10 aMW to 100 kW. The Petition also encompassed a “Joint Motion” requesting that the Commission reduce the eligibility cap “on an interim basis during the pendency of this investigation and docket.” Petition at 2. The Petitioners insist that the Commission has made similar reductions in the past on an interim basis. In particular, the Petitioners cite to Commission Order Nos. 29872 in Case No. IPC-E-05-22.

In the IPC-E-05-22 case, the Commission was examining issues related to suspending Idaho Power’s obligation to purchase QF power and adjustments in the published avoided cost rate for non-firm wind. The Petition cites to a passage from Order No. 29872 that addresses Idaho Power’s request to suspend its PURPA obligations. In reducing the eligibility cap from 10 aMW to 100 kW in that case, the Order stated that the Commission

did not eliminate the utility’s obligation to purchase from wind QFs, but we establish greater administrative control of contracts during the period of our investigation. For wind QFs greater than 100 kW offering power on an unfirmed basis, the door to a purchase contract is not closed. For projects not qualifying for the published rate, individual negotiation of rates under an IRP based methodology is required. Under such IRP based methodology, [utility] proposed rate adjustments, if any, are based on individual project characteristics and are separately considered by the Commission.

Joint Petition at 3 *citing* Order No. 29872 at 10.

The Petition asserts that many of the same reasons that justified the Commission’s action to lower the eligibility cap to 100 kW in the 05-22 case are present in this case. Today “[h]owever, those reasons and justifications are amplified as the number of projects, their

combined MWs, the dollar impacts, and the potential consequences to the system and to customers are much larger and much more pronounced than even those that existed at that time.” *Id.* at 3.

The Petitioners insist that they are not asking for a moratorium on the utilities’ obligation to contract with QF projects. What the Petitioners are proposing

is only that the eligibility for the published avoided cost rate be modified on an interim basis. Utilities would still have an obligation to contract for the purchase of power from QFs that are over the eligibility cap for the published rate, just like they do today. . . . Much as the Commission stated in IPC-E-05-22, the [Petitioners] see [the reduction in the eligibility cap] as a way to establish greater administrative control of the contracts during the pendency of the Commission’s and parties’ investigation of the issues [in this case].

Joint Petition at 6.

The Petitioners request that the Commission take immediate action on its request to lower the eligibility cap immediately “on fewer than fourteen days notice, if possible. *See*, RP 256.” The Petitioners’ request for an immediate reduction in the eligibility cap is to mitigate the typical “‘race’ to the door of the utilities with projects attempting to position themselves for a claim to ‘grandfathering’ and entitlement to the previously effective rates, terms, conditions, etc.” Joint Petition at 7. The three Petitioners further assert that it is important that the eligibility cap be reduced for all three utilities so as not to attract a disproportionate number of project proposals for a utility that it is not granted a reduction in its eligibility cap. *Id.*

PETITIONS TO INTERVENE AND ANSWERS

After the filing of the Joint Petition, the Commission received several Petitions to Intervene. Petitions to Intervene have been filed by: Cedar Creek Wind, LLC; Exergy Development Group of Idaho; Grandview Solar II; Idaho Windfarms, LLC; Interconnect Solar Development, LLC; the Northwest and Intermountain Power Producers Coalition (NIPPC)¹; Renewable Energy Coalition (the “Coalition”)²; Intermountain Wind, LLC; and J.R. Simplot Company. All of the Petitioners allege a direct and substantial interest in the Joint Petition.

¹ NIPPC’s members include: Calpine; Capital Power Operations (U.S.A.), Inc.; Constellation Energy Control & Dispatch; EverPower Renewables; Exergy Development Group; First Wind; Horizon Wind Energy; Invenergy LLC; LS Power Associates; Ridgeline Energy; Shell Energy North America; TransAlta Energy Marketing, Inc.; and TransCanada. Petition at 2.

² The Coalition is an Oregon-based consortium of existing base load hydroelectric and biomass QFs located in the northwest.

In addition to the Petitions to Intervene, the Commission also received four Answers to the Joint Petition. Answers were filed by NIPPC, the Coalition, Simplot, and the Milk Producers of Idaho.³ The Answers raise both procedural and substantive objections to the Petitioners' request to lower the eligibility cap for the published avoided cost rate to 100 kW nameplate capacity. More specifically, NIPPC urges the Commission to take no action regarding the eligibility cap until interested parties have been allowed reasonable time to respond to the Petitioners' request regarding the 100 kW cap. NIPPC Answer at 9-10. NIPPC also argues that the Petitioners have not served "all adverse parties" and the Petitioners have not provided evidence to support the request for immediate relief. *Id.* at 5-9. Simplot also adopted NIPPC's Answer.

The Milk Producers, Simplot and the Coalition also argue in their Answers that the lowering of the eligibility cap should not apply to non-wind QFs. Simplot asserts that the Joint Petition does not refer to any "problems associated with biomass, cogeneration, solar, small hydro, waste-to-energy projects or any other type of PURPA eligible QF resource. These other types of [QF] resources have very different generating characteristics from wind and should therefore not be caught in the overly broad sweep of the Joint Motion." Simplot Answer at 3.

STAFF ANALYSIS

Without addressing the merits of the Joint Petition or the Answers, Staff recommends that the Commission develop a record in this matter by soliciting written comments under Modified Procedure, Rule 202. To develop a record in this matter, Staff recommends that the Commission issue a Notice of Petition and Notice of Modified Procedure, and convene an oral argument based on the proposed schedule below.

DATE	ACTION
December 2-3, 2010	Issue Notice of Petition/Modified Procedure
December 22, 2010	Parties Initial Comments Due
January 19, 2011	Parties Reply Comments Due
January 27, 2011	Oral Argument

Staff recommends that the Commission direct the Petitioners to file initial comments in support of their request to reduce the eligibility cap and also allow other parties the opportunity to file initial comments. Staff also recommends that the Commission set a deadline for intervention and issue a Notice of Parties in this case. For purposes of administrative

³ The Milk Producers did not file a Petition to Intervene and its "Answer" was a "letter in opposition."

efficiency, the Staff recommends that the Commission approve the Petitions to Intervene already filed.

Finally, Staff recommends that the Commission note in its Order and Notice that the Commission's decision regarding the Petitioners' request to reduce the published avoided cost eligibility cap shall become effective seven days after the Commission issues its Notice of Petition and Notice of Modified Procedure in this case.

COMMISSION DECISION

1. Does the Commission desire to issue a Notice of Petition and process this case under Modified Procedure? Does the Commission wish to adopt the proposed schedule set out above?

2. Does the Commission wish to approve the Petitions to Intervene? Does the Commission wish to establish a deadline for intervention? Does the Commission direct the Commission Secretary to subsequently prepare a Notice of Parties in this matter?

3. Does the Commission direct that parties file their initial and reply comments on other parties by electronic mail?

4. Does the Commission desire to indicate in its Order that its decision regarding the Joint Motion to reduce the published avoided cost eligibility cap from 10 aMW to 100 kW shall become effective seven days after the Commission issues its Notice of Petition and Notice of Modified Procedure?



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